

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 1:13-cr-0263-SEB-MJD-1
)	
BENNY EUGENE BROWN,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

On January 29, 2015, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on July 28, 2014. Defendant Benny Eugene Brown appeared in person with his appointed counsel, William Dazey. The government appeared by James Warden, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Troy Adamson.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Brown of his rights and provided him with a copy of the petition. Defendant waived his right to a preliminary hearing.
2. After being placed under oath, Defendant admitted the violations. [Docket No. 11.]
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

**Violation
Number**

Nature of Noncompliance

- 1 **“The defendant shall not unlawfully possess a controlled substance.”**
- 2 **“The defendant shall not commit another federal, state, or local crime.”**

On July 24, 2014, a search of the offender’s residence was conducted. Inside the kitchen cupboard, officers discovered one bag of methamphetamine packaged for sale and a glass drug pipe. Officers also discovered tow digital scales, baggies used for drug sales, a pill bottle with white powder residue, a straw for nasal ingestion, and a foil “canoe” used to inhale methamphetamine. A search of the defendant’s person resulted in another bag of methamphetamine concealed behind his Indiana identification card in his wallet. During an interview by the probation officer subsequent to the search, the defendant admitted possessing methamphetamine, scales, baggies, and a pipe for using narcotics.

The defendant was arrested and charged by the Delaware County, Indiana, Drug Task Force with possession of methamphetamine and drug paraphernalia. Official charges are pending in Delaware County.

- 3 **“The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.”**
- 4 **“The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.”**
- 5 **“The defendant shall refrain from any unlawful use of a controlled substance.”**

On June 9, 2014, Mr. Brown submitted a urine sample which tested positive for amphetamine. He admitted using methamphetamine prior to collecting the sample.

- 6 **“The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.”**

The probation officer determined Mr. Brown was not residing at his residence at 1933 W. 11th Street in Muncie, Indiana. The probation officer discovered the defendant was residing in a residence at 923 S. Madison in Muncie, Indiana, with Jessica Wolfe and Jeff Kirby. Prior to the search on

July 24, 2014, the defendant admitted he had been residing at 923 S. Madison and had not informed the probation officer.

4. The parties stipulated that:
 - (a) The highest grade of violation is a Grade B violation.
 - (b) Defendant's criminal history category is V.
 - (c) The range of imprisonment applicable upon revocation of supervised release, therefore, is 18 to 24 months' imprisonment.

5. The parties jointly recommended a sentence of 18 months with 1 year of supervised release.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that Defendant violated the conditions in the petition, that his supervised release should be revoked, and that he should be sentenced to the custody of the Attorney General or his designee for a period of 18 months, followed by 1 year of supervised release. Although this is at the low end of the range, Defendant did not commit a crime of violence, and his conduct appears largely rooted in a drug addiction problem. Moreover, Defendant admitted his guilt. The Magistrate Judge recommends placement at FCI Oxford, and further recommends Defendant participate in a drug treatment program. Defendant is to be taken into custody immediately pending the District Judge's action on this Report and Recommendation.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the fourteen-day period to object to the Report and Recommendation.

Dated: 02/02/2015



Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

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